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Subject to 25X 2039

CR: 606 Classification Act of 1949

3 January 1953

File CR: NSC

MEMORANDUM FOR: Comptroller

SUBJECT: Super Grades for National Security Council

1. Your memorandum of 29 December and the file attached discuss the proposal that CIA establish four super grades and detail the incumbents to the National Security Council staff which will reimburse CIA out of funds available to the Council. The appointees would be the present staff officers performing the same duties at grades lower than would be furnished by CIA. The NSC has been unable to obtain the desired grades for these officers.

2. The National Security Council is an independent Executive agency which was created by the National Security Act of 1947. Section 101 (c) provides for an Executive Secretary who is authorized subject to the Civil Service laws and the Classification Act, as amended, to appoint and fix the compensation of such personnel as may be necessary to perform the duties prescribed by the Council.

3. CIA is an independent Executive agency established under the National Security Council and subject to its direction, but it is not a part of the Council. This is clearly indicated in the fact that the Director is not a statutory member of the NSC, although he acts as intelligence adviser thereto. CIA is exempted from the Classification Act and has wide statutory authority to carry out its functions. The Comptroller General ruled that under this authority there is "no legal objection to the establishment of positions in your Agency * * *" in the super grades. (Emphasis added.)

4. The proposal to create the positions in CIA and detail them to the NSC is a subterfuge to obtain through exercise of CIA's special authorities what the NSC cannot obtain directly. These authorities were given to CIA "for purposes necessary to carry out its functions", and not to help other agencies out of administrative difficulties. Also the proposal violates that provision of law cited above which requires the staff of the NSC to perform staff duties and to be appointed under the Classification Act.

5. Being a subterfuge, in our opinion the payment of salaries under these circumstances would be subject to an audit exception which might require collection back from the individuals of sums paid to them as salary in excess of their present salaries. The final authority on such matters is the Comptroller General, and the individuals concerned would be unwise to accept any money under the proposed arrangements unless they had specific approval from the Comptroller General that the arrangement was legal. Since

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his earlier ruling referred to positions in the Agency, we are of the opinion that it was directed to people actually performing the work of the Agency. To construe the Comptroller's opinion to support the fact that we could in effect create super grade positions in any other Executive agency would, we believe, seriously endanger the super grade authority we now possess.

LAWRENCE R. HOUSTON
General Counsel

OGC/LRH:kr

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